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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/610,485	06/30/2003	Russell W. Strong	IVI 1024 PUS	8804

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EXAMINER

CULBRETH, ERIC D

ART UNIT	PAPER NUMBER
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3616

MAIL DATE	DELIVERY MODE
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06/12/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/610,485

Applicant(s)

STRONG, RUSSELL W.

Examiner

Eric Culbreth

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2008.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 4, 5 and 16-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-13 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 9/21/06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. As noted by Mr. John Artz, applicant's attorney, in the telephone interview of 4/15/08, the current application is not abandoned, as it was revived on 8/5/05.

Following is an action on the merits of the application.

Election/Restrictions

2. Applicant's election without traverse of Figures 1-7 and 11 in the reply filed on 12/18/07 is acknowledged.

3. Claims 4-5 and 16-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected embodiment, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 12/18/07.

Drawings

4. The drawings are objected to because of the following informalities. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be

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canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

- a. The specification and drawings should be carefully reviewed and corrected. Some examples are given below.
- b. Reference numerals 131, 86, 90 and 96 (paragraph [0042] and the remainder of the specification) are not on the drawings.
- c. Reference numerals 57R, 64R, 66L, 70, 74R, and 68L (paragraph [0043] and the remainder of the specification) are not on the drawings.
- d. Reference numerals 116 and 112L (paragraph [0044]) are not on the drawings.
- e. Reference numeral 114L (paragraph [0044]) is not on the drawings.
- f. Reference numerals 168L, 164L, 166L and 170R (paragraph [0045]) are not on the drawings.
- g. Regarding paragraph [0046], line 7 Figure 4 does not have cylinders 126L, 126R.

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h. Reference numerals 54R, 52R, and 50R (paragraph [0047]) are not on the drawings.

i. Reference numeral 50L (paragraph [0047]) is not a swivel joint (see Figures 6A and 6B).

j. Reference numerals 104 and 100 (paragraph [0049]) are not on the drawings.

k. Reference numerals 118L, 116B, 25L, 136L and 137L (paragraph [0059]) are not on the drawings.

l. Figures 11 and 12 are not clear because of shading.

m. Reference numeral 94R (paragraph [0065]) is not on the drawings.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the integral body and frame (claim 2) and electronic microprocessor (claims 9, 11 and 13) and power source mounted to frame (claim 20) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

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and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

6. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

7. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There is no support in the specification for claims for claims 9, 11, and 13 (microprocessor) nor claim 20 (power source mounted to frame).

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 7-13 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. How signals from the attitude sensor are used by the electronic controller to adjust the wheels for adjustability (claim 7), what "gyroscope technology" means or includes (claim 8), how the attitude signals determine the center of gravity (claim 9), how the load sensor(s) information is used to maintain stability (claim 10) and determine center of gravity (claim 11), how the position sensors determine fore and aft stability (claim 12), the features of claim 13 and the features of claim 20 are not disclosed in an enabling manner (the specification states what happens, but does not disclose details of how this done).

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 contradicts claim 1 because claim 1 recites the body mounted to the frame and claim 2 recites the body and frame as integral.

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No.

11/383,528. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claims recite either the same features or obvious variants (i.e., the same part with a different name or description).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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13. Claims 7 and 20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 13 of copending Application No. 11/383,580. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claims recite either the same features or obvious variants (i.e., the same part with a different name or description).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Moser US5346233.

Moser discloses a vehicle capable of going over uneven terrain as functionally recited (the grassy shoulder of the interstate, for instance) with a load comprising a longitudinal frame above and adjacent tracks 18, a body mounted to the frame (the trailer body), and an adjustable axle assembly 17 mounted to the frame through tracks 18 such that the axle at 14 is orthogonal to the frame axis. A supplemental ground engaging apparatus 10 is mounted to the frame at 19 such that it cooperates with the

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wheels on the axle to maintain clearance relative to the ground. Cylinders 32 are an actuation system adjusting the axle assembly relative to the body, and an electronic control system 38 (column 6, lines 13-17) communicates with the actuation system to adjust the axle assembly.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 2-3 and 6 as best understood is rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews US006065556A in view of Moser.

Andrews discloses a vehicle capable of traveling over uneven terrain with a load (a skid steer loader, meaning it carries a load, traveling across difficult terrain (column 11, lines 45-48), which would be uneven terrain) comprising a longitudinal frame and body 8 formed as an integral unibody chassis (column 6, lines 46-57) (claim 2) and an adjustable axle assembly 3 longitudinally adjustable. Wheel assembly 4 cooperates with the first assembly 3 to maintain clearance above the ground. Actuation system 12 adjusts the axle assembly 3 relative to the body 8. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Andrews to include an electrical controller adjusting the axle assembly in view of Andrews' teaching at column 11, lines 35-48 that the operator can instantly adjust the axle assembly

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(meaning the control is in the cabin) and Moser's teaching of the electronic control 38 in the body 10 for adjusting the wheel axle assembly location (claim 2). In Andrews, the supplemental apparatus is rotatable wheel assembly 4 (claim 3). Also in the combination Moser teaches a control panel at 68a for controlling the electronic controller, and in the combination this panel would be in Andrews' body 8 (claim 6).

Allowable Subject Matter

18. Claims 14-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

19. Claim 20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 1st paragraph, set forth in this Office action.

20. Claims 7-13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 1st paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Strong US 20060254841A1 and US 20060254840A1 are cited as the published applications of the double patenting applications above.

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PriefertUS005368121A, Santerre US4204697 and Ozawa et al US 20040079561A1 (Figures 46-47) are cited to show longitudinally adjustable axle assemblies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Culbreth whose telephone number is 571/272-6668. The examiner can normally be reached on Monday-Thursday, 9:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571/272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Eric Culbreth
Primary Examiner
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